

AMENDED IN SENATE APRIL 30, 2013

AMENDED IN SENATE APRIL 22, 2013

SENATE BILL

No. 652

Introduced by Senator DeSaulnier

February 22, 2013

~~An act to amend Sections 910, 916, and 944 of the Civil Code, relating to construction defect litigation. An act to add Section 1102.3b to the Civil Code, relating to real property.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 652, as amended, DeSaulnier. ~~Residential construction defect litigation: notice requirements. Real property disclosures: construction defect litigation.~~

Existing law requires the transferor of residential property to make certain disclosures to a prospective transferee and requires these disclosures to be made on a specified form. Under existing law, the transferor is required to disclose any lawsuits by or against the transferor threatening to or affecting the real property, as specified. Existing law makes any person who willfully or negligently violates or fails to perform any specified duty liable in the amount of actual damages suffered by a transferee.

Existing law prescribes a process for determining liability in an action seeking the recovery of damages arising out of, or related to, deficiencies in residential construction, design, and related issues and sets forth specified standards in this regard. ~~Existing law requires a claimant alleging a violation of these standards to follow a specified, prelitigation procedure, which includes providing a builder who has allegedly violated those standards a notice describing the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of~~

the claimed violation. Existing law limits the damages that a claimant may recover in an action in this regard. Existing law also allows a builder to inspect the claimed unmet standards within 14 days after acknowledgment of the receipt of a claim and, if the builder intends to hold specified parties responsible for its contribution for an unmet standard, requires the builder to provide notice to the specified parties in order to attend an inspection.

This bill would require the notice given to the builder to describe the claim in reasonable, specific detail, including observed evidence, that is sufficient for the builder to determine the nature and location of the claimed violation, the way in which the standard was not met, and the date and time that the claimed violation was observed or determined not to meet the standard. The bill would require a homeowner who makes a claim for damages to record the claim in a Notice of Settlement, as provided, and to notify a subsequent potential purchaser of the claim and the status of the repairs. Failure to make this disclosure would be the basis for a cause of action by a subsequent purchaser of the property to require the seller to make the identified repairs or pay the subsequent purchaser the amount of damages necessary to make the repairs. The bill would also require the notice provided to the builder to contain an acknowledgment of these obligations. This bill would additionally revise the timeline in which a builder may inspect a claimed unmet standard and the timeline and manner in which the builder may notify a specified third party of an inspection. *the transferor of any real property to additionally disclose to a potential transferee all claims for damages relating to deficiencies in residential construction, as specified, made by the transferor and the status of those claims.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 1102.3b is added to the Civil Code, to*
- 2 *read:*
- 3 *1102.3b. In addition to the disclosures required by Section*
- 4 *1102.6, the transferor of any real property subject to this article*
- 5 *shall disclose to a potential transferee all claims for damages*
- 6 *made by the transferor pursuant to Title 7 (commencing with*
- 7 *Section 895) of Part 2 of Division 2 and the status of these claims.*
- 8 *SECTION 1. Section 910 of the Civil Code is amended to read:*

1 910. ~~Prior to filing an action against any party alleged to have~~
2 ~~contributed to a violation of the standards set forth in Chapter 2~~
3 ~~(commencing with Section 896), the claimant shall initiate the~~
4 ~~following prelitigation procedures:~~

5 ~~(a) The claimant or his or her legal representative shall provide~~
6 ~~written notice via certified mail, overnight mail, or personal~~
7 ~~delivery to the builder, in the manner prescribed in this section, of~~
8 ~~the claimant's claim that the construction of his or her residence~~
9 ~~violates any of the standards set forth in Chapter 2 (commencing~~
10 ~~with Section 896). That notice shall provide the claimant's name,~~
11 ~~address, and preferred method of contact, and shall state that the~~
12 ~~claimant alleges a violation pursuant to this part against the builder,~~
13 ~~and shall describe the claim in reasonable, specific detail, including~~
14 ~~the specific observed evidence of the violation and its location~~
15 ~~within the home or common area, that is sufficient for the builder~~
16 ~~to determine the nature and location of the claimed violation, the~~
17 ~~way in which the standard was not met, and the date and time that~~
18 ~~the claimed violation was observed or determined not to meet the~~
19 ~~standard. The notice shall be signed by the claimant certifying that~~
20 ~~each claimed violation is known to the claimant to exist in the~~
21 ~~locations described. That document shall have the same force and~~
22 ~~effect as a notice of commencement of a legal proceeding.~~

23 ~~(b) The notice shall be a written statement signed and verified~~
24 ~~by the claimant containing all of the following:~~

25 ~~(1) An acknowledgment of the claimant's obligation to make a~~
26 ~~disclosure to a subsequent potential purchaser as required by~~
27 ~~Section 944.~~

28 ~~(2) The name of the property owner or reputed owner.~~

29 ~~(3) A statement of the claimant's allegation of damages.~~

30 ~~(4) A legal description of the property.~~

31 ~~(c) The notice requirements of this section do not preclude a~~
32 ~~homeowner from seeking redress through any applicable normal~~
33 ~~customer service procedure as set forth in any contractual,~~
34 ~~warranty, or other builder-generated document; and, if a~~
35 ~~homeowner seeks to do so, that request shall not satisfy the notice~~
36 ~~requirements of this section.~~

37 ~~(d) It is the intent of the Legislature that a form may be~~
38 ~~developed and provided by the builder prior to the close of escrow~~
39 ~~that includes the elements of the notice required by this section.~~
40 ~~If the builder provides the form to the original purchaser, the~~

1 claimant or his or her legal representative shall fill out the form,
2 signed by the claimant, in order to initiate a claim pursuant to this
3 title. The claimant shall acknowledge that the claimant has read
4 and understood the section of the claim form regarding the
5 requirement to disclose any lawsuits for construction defects to
6 future purchasers pursuant to Section 1102.6 and the penalties for
7 filing fraudulent claims.

8 SEC. 2. Section 916 of the Civil Code is amended to read:

9 916. (a) If a builder elects to inspect the claimed unmet
10 standards, the builder shall complete the initial inspection and
11 testing no sooner than 10 business days but no later than 14
12 business days after acknowledgment of receipt of the notice of the
13 claim, at a mutually convenient date and time. Any delay in
14 reaching agreement on the date and time of the inspection shall
15 automatically extend the 14-day time limit contained in this section
16 for a period of time equal to the delay. If the homeowner has
17 retained legal representation, the inspection shall be scheduled
18 with the legal representative's office at a mutually convenient date
19 and time, unless the legal representative is unavailable during the
20 relevant time periods. All costs of builder inspection and testing,
21 including any damage caused by the builder inspection, shall be
22 borne by the builder. The builder shall also provide written proof
23 that the builder has liability insurance to cover any damages or
24 injuries occurring during inspection and testing. The builder shall
25 restore the property to its pretesting condition within 48 hours of
26 the testing. The builder shall, upon request, allow the inspections
27 to be observed and electronically recorded, video recorded, or
28 photographed by the claimant or his or her legal representative.

29 (b) Nothing that occurs during a builder's or claimant's
30 inspection or testing may be used or introduced as evidence to
31 support a spoliation defense by any potential party in any
32 subsequent litigation.

33 (c) If a builder deems a second inspection or testing reasonably
34 necessary, and specifies the reasons therefor in writing within three
35 days following the initial inspection, the builder may conduct a
36 second inspection or testing. A second inspection or testing shall
37 be completed within 40 days of the initial inspection or testing.
38 All requirements concerning the initial inspection or testing shall
39 also apply to the second inspection or testing.

1 (d) If the builder fails to inspect or test the property within the
2 time specified, the claimant is released from the requirements of
3 this section and may proceed with the filing of an action. However,
4 the standards set forth in the other chapters of this title shall
5 continue to apply to the action.

6 (e) If a builder intends to hold a subcontractor, design
7 professional, individual product manufacturer, or material supplier,
8 including an insurance carrier, warranty company, or service
9 company, responsible for its contribution to the unmet standard,
10 the builder shall provide notice so that person or entity receives
11 notice of the initial, or if requested, second inspection, including
12 date, time, and location, and a copy of the claim, at least five
13 business days in advance, of any alleged unmet standard and may
14 participate in the repair process. The subcontractor, design
15 professional, individual product manufacturer, or material supplier,
16 including an insurance carrier, warranty company, or service
17 company, shall provide an updated email and physical address at
18 which this notice may be provided. The builder shall rely on the
19 most recent email or physical address the subcontractor, design
20 professional, individual product manufacturer, or material supplier,
21 including an insurance carrier, warranty company, or service
22 company, has provided. The claimant and his or her legal
23 representative, if any, shall be advised in a reasonable time prior
24 to the inspection as to the identity of all persons or entities invited
25 to attend. This subdivision does not apply to the builder's insurance
26 company. Except with respect to any claims involving a repair
27 actually conducted under this chapter, nothing in this subdivision
28 shall be construed to relieve a subcontractor, design professional,
29 individual product manufacturer, or material supplier of any
30 liability under an action brought by a claimant.

31 SEC. 3. Section 944 of the Civil Code is amended to read:

32 944. (a) If a claim for damages is made under this title, the
33 homeowner is only entitled to damages for the reasonable value
34 of repairing any violation of the standards set forth in this title, the
35 reasonable cost of repairing any damages caused by the repair
36 efforts, the reasonable cost of repairing and rectifying any damages
37 resulting from the failure of the home to meet the standards, the
38 reasonable cost of removing and replacing any improper repair by
39 the builder, reasonable relocation and storage expenses, lost
40 business income if the home was used as a principal place of a

1 ~~business licensed to be operated from the home, reasonable~~
2 ~~investigative costs for each established violation, and all other~~
3 ~~costs or fees recoverable by contract or statute.~~

4 ~~(b) (1) Upon settlement of a claim, or upon completion of~~
5 ~~repairs by the builder in response to a claim, the claimant shall~~
6 ~~immediately record a Notice of Settlement in the Office of the~~
7 ~~County Recorder where the property is located. The Notice of~~
8 ~~Settlement shall include the original Notice of Claim and shall be~~
9 ~~signed by the claimant. In addition, the Notice of Settlement shall~~
10 ~~state either that the repairs were made to the satisfaction of the~~
11 ~~homeowner or that payment was made by the builder in lieu of~~
12 ~~repairs.~~

13 ~~(2) A claimant shall notify a subsequent potential purchaser of~~
14 ~~the property of the amount and nature of the claim and whether or~~
15 ~~not the claimed violation was repaired consistent with subdivision~~
16 ~~(a) of Section 1102.1, which provides that it is the existing~~
17 ~~obligation of the parties to a real estate contract, or their agents,~~
18 ~~to disclose any fact materially affecting the value and desirability~~
19 ~~of the property, including, but not limited to, the physical~~
20 ~~conditions of the property.~~

21 ~~(3) Failure to satisfy the requirements of paragraph (1) shall be~~
22 ~~the basis for a cause of action by a subsequent purchaser of the~~
23 ~~property to require the claimant to make the repairs identified in~~
24 ~~the claim or pay a subsequent purchaser the amount of damages~~
25 ~~necessary to make the repairs.~~